

In re) Fair Hearing No. 15,310
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare establishing overpayments against her in the Food Stamp and ANFC programs which occurred because of failure by the agency to count income received by her in calculating her benefits.

1. The petitioner has been a Food Stamp and ANFC recipient for some years. During the Fall of 1996, the petitioner reported to the Department that she had begun working at Dunkin' Donuts on a part-time basis. In spite of this report, her income was not counted in determining her eligibility for the next ten months, from October 1, 1996 through July 31, 1997, when the error was discovered.

2. On November 24, 1997, the petitioner was mailed a notice informing her that the Department calculated that she had received \$794 more in Food Stamp benefits than she should have due to the department's error. That same date she was sent a notice that she had also received \$2,617 more in ANFC benefits during the above period although the notice indicated that the petitioner had failed to report income as the reason therefore. The Department agrees that it was not

the petitioner's fault but rather the Department's error which led to the overpayments.

3. The petitioner appealed because she could not believe that she had been overpaid that much money. At the request of the hearing officer, the Department provided the petitioner with copies of the wage reports they used for those months and detailed calculations on a month-by-month basis showing what income was used, how the benefits should have been calculated and the difference between that amount and what she was actually paid. This review showed a total overpayment of \$775 in the Food Stamp program, not \$794 which was previously thought, and \$2,520 in the ANFC program, not the \$2,617 which was previously calculated. A copy of those calculations is attached hereto as Exhibit Number One and incorporated herein as evidence of the amounts actually paid and the amounts which should have been paid.

4. The petitioner has not objected to nor corrected the figures used by the Department. Neither has she offered any evidence showing that the wages used were wrong or that she did not receive and use the ANFC and Food Stamps benefits which were mailed to her. It is therefore, found that the amount of the overpayment in the Food Stamp program is \$775 and the amount of the overpayment in the ANFC program is \$2,520.

ORDER

The decision of the Department to establish overpayments in the ANFC program in the amount of \$2,520 and the Food Stamp program of \$775 is affirmed.

REASONS

The Department has shown that the petitioner did receive benefits in excess of what she should have in both the Food Stamp and ANFC program for the period from October 1, 1996 through July 31, 1997. The Department concedes that these overpayments were the result of its error and not the petitioner's. However, under both these programs, overpayments which were the result of an error by the State agency must still be established and are subject to recovery.

The ANFC regulations require that

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which s\he is a member.

. . .

Recoupment shall be made each month from any gross income (without application of disregards), liquid resources and ANFC payments so long as the assistance unit retains from its combined income 90 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no income other than ANFC, the amount of the recoupment will equal 10 percent of the grant amount.

If however, the overpayment results from Department error or oversight, the assistance unit must retain from its combined income 95 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no income other than ANFC, the amount of the recoupment will equal 5 percent of the grant amount.

W.A.M. 2234.2

The above regulation means that the Department is required to recover any amounts wrongfully paid regardless of the reason by recouping it out of currently paid ANFC benefits. However, those who were overpaid because of Department error get a lower rate of recoupment from their benefits. If the petitioner is still on ANFC, she will receive another notice telling her how much will be recouped. If she feels that the recoupment amount is incorrect she can appeal that. However, she is urged as well to discuss any recoupment amount with her worker for a full explanation of how that process works.

The Food Stamp program similarly requires the Department to establish a claim against any overissuance as follows:

. . . The State agency shall establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive. . .

. . .

(2) Administrative Error Claims

A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action

. . .

F.S.M. 273.18(a)(2)

The State agency shall take action to establish a claim against any household that received an overissuance due to . . . administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elapsed.

. . .

2. Instances of administrative error which may result in a claim include, but are not limited to, the following:

- i A State agency failed to take prompt action on a change reported by the household.

. . .

F.S.M. 273.18(b)

For each month that a household received an overissuance due to . . . administrative error, the State agency shall determine the correct amount of Food Stamp benefits the household was entitled to receive. The amount of the administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered.

F.S.M. 273.18(c)(1)

State agencies shall initiate collection action against the household on all . . . administrative error claims unless the claim is collected through offset . . .

F.S.M. 273.18(d)(1)

State agencies shall collect payments from households currently participating in the program by reducing the household's food stamp allotments. Prior to the reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be received each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month . . .

. . .

ii. Administrative Error Claim

For administrative error claims, the amount of food stamps shall be the greater of ten percent of the household's monthly allotment or \$10 per month.

F.S.M. 273.18g(4)

Under this regulation, the Department has the obligation to recover overpaid amounts back to twelve months before the date the overpayment was discovered. This overpayment was discovered in July of 1997, so all the benefits wrongly paid out from October 1, 1996 through that time must be recovered through some method. If the petitioner is still on Food Stamps, the method will be reduction of her benefits unless she can pay it some other way. She will receive a notice of how the reduction should occur and can appeal that notice if she feels it is incorrect. The petitioner should be aware that if she is not on Food Stamps, there are other methods of collection that could be used which the Department may suggest to her and which she should discuss with her worker and attorney. She may also have appeal rights with regard to those attempts.

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